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Attorneys for Defendants County of Napa and Jose Rossi

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT JONES,
vs.
NAPA POLICE DEPARTMENT, COUNTY OF
NAPA, CITY OF NAPA; MICHELLE JONES;
THOMAS TOLER, dba Toler Bail Bonds; JOSE
ROSSI; and DOES 1-100, individually and as
employees or agents of the City or County of Napa,
Plaintiff,
Defendants.)
)

) NO. C 07 3054 JSW
)
) **REPLY BRIEF IN SUPPORT OF**
) **MOTION TO DISMISS AND FOR**
) **MORE DEFINITE STATEMENT**
)
) Date: September 12, 2008
) Time: 9:00 a.m.
) Courtroom 2, 17th Floor
) Hon. Judge Jeffrey S. White
)
)

Plaintiff challenges defendant's motion to dismiss on four issues: (1) timeliness of the complaint; (2) the applicability of prosecutorial immunity; (3) the certainty of plaintiff's allegations against all defendants; and (4) the certainty of plaintiff's allegations as these pertain to criminal proceedings against him.¹

¹ Plaintiff apparently does not dispute that his complaint fails to state facts sufficient to support any cause of action against Defendant Rossi in that plaintiff's First through Fourth Causes of Action allege no specific causal connection between the alleged actions of Rossi and the civil rights violations claimed. Plaintiff does not dispute in his opposition his failure to allege that Rossi either had a "personal involvement in the constitutional deprivation," or facts demonstrating a causal connection between Rossi and the actions of which he complains. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991).

Neither does plaintiff respond to defendants' argument that he fails to allege any specific facts as to the County of Napa upon which a cause of action might be stated. The absence of any allegations of specific duties of the County or actions of the County causally related to plaintiffs' claimed damages,

REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT

1 **A. TIMELINESS**

2 The issue raised in the Motion to Dismiss or, in the alternative, for a more definite statement,
 3 is that plaintiff's complaint - on its face - fails to state facts sufficient to demonstrate he has
 4 complied with the applicable limitations. Plaintiff argues that the limitation for filing this tort action
 5 was tolled pending resolution of administrative claims presented by him to the City and County of
 6 Napa. Presumably, plaintiff is urging that he preserved his tort causes of action by presentation of a
 7 claim in compliance with California Government Code section 911.2; however, he must specifically
 8 allege compliance in his complaint. ([State v. Superior Court](#) (2004) 32 Cal.4th 1234, 1239.)

9 Pursuant to California Civil Code section 342, the limitations imposed by the Tort Claims
 10 Act take the place of those limitations applicable to actions against private parties. There is no
 11 tolling pending resolution of a Tort Claim submitted pursuant to section 911.2. Indeed, the
 12 applicable limitations may even be shorter than the 2-year limitation.²

13 Regardless of the limitation ultimately determined to be applicable, defendants motion is
 14 based on the inadequacy of plaintiff's pleading; this, plaintiff fails to address.

15 **B. PROSECUTORIAL IMMUNITY**

16 Plaintiff bases his claims against Jose Rossi solely in Rossi's capacity as "Deputy District
 17 Attorney." All allegations specifically made against defendant Rossi are related to his activity in his
 18 capacity as Deputy District Attorney. Nothing in plaintiff's opposition alters the effect of his
 19 pleading. In fact, plaintiff's argument confirms the applicability of prosecutorial immunity. Plaintiff
 20 makes clear that his allegations against Rossi are based entirely on Rossi's "charg[ing] plaintiff with
 21 crimes" – clearly prosecutorial activity. There are no allegations, and plaintiff does not represent
 22 that he will assert any allegations, regarding conduct falling outside the scope of Rossi's

23
 24 plaintiffs have stated no cause of action against this entity and this motion to dismiss must be
 granted.

25 Plaintiff also fails to address the issue of punitive damages he seeks but which are not
 recoverable against a public entity in California. California Government Code § 818.

26 ² Generally, one of three limitations periods are applicable to tort claims against public entities: six
 27 months from written notice of rejection of the claim (Government Code section 945.6(a)(1)); two years from
 accrual of the cause of action where there is no written rejection (Government Code section 945.6(a)(2); or
 28 thirty days following court-ordered relief from claim filing requirement (Government Code section
 946.6(f.). [California Government Tort Liability Practice](#) (4th ed. 2004) section 8.13.

prosecutorial duties, whether in interviewing witnesses, communicating information, or making statements entirely in connection with his role as the attorney prosecuting criminal charges against plaintiff.

C. VAGUE AND AMBIGUOUS ALLEGATIONS

Plaintiff insists his pleading is clear while, at the same time, the content of his argument in opposition to this issue confirms that the complaint is hopelessly vague and ambiguous. Plaintiff claims that his complaint “contains specific facts” but utterly fails to identify any specific facts alleged in connection with these moving defendants.

D. STATUS OF CRIMINAL PROCEEDINGS AGAINST PLAINTIFF

10 Plaintiff requests that the court ignore the status of criminal charges against plaintiff;
11 however, these charges are directly related to plaintiff's ability to plead and maintain any cause of
12 action against these moving defendants. Plaintiff affirmatively pleaded his criminal conviction.
13 Based on the legal authorities cited by defendants in their motion, plaintiff clearly cannot avoid the
14 effect of that conviction on his ability to pursue this present action. Certainly, his bare assertion that
15 "many of the claims contained in the complaint are unrelated to the crimes with which he was
16 charged and convicted" is wholly insufficient to address this issue. Plaintiff must specify the nature
17 and status of his criminal conviction to allow these defendants to frame a proper response.

E. CONCLUSION

19 Defendants County of Napa and Jose Rossi respectfully request this court issue an order
20 dismissing plaintiff's complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6).
21 Alternatively, defendant requests this court issue an order requiring plaintiff to more definitely state
22 his claims against defendants.

23 || Dated: August 19, 2008

JONES & DYER

By: /s/ Mark A. Jones
MARK A. JONES
KRISTEN K. PRESTON
Attorneys for Defendants County of
Napa and Jose Rossi

1 PROOF OF SERVICE BY MAIL
23 CCP Sections 1013a, 2015.5 and Rules of Court, Rule 2008
45 I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen
6 years and not a party to the within entitled action; my business address is 1800 J Street, Sacramento, California, 95814.
78 On this date, I served the foregoing documents described as follows: **REPLY BRIEF IN SUPPORT**
9 **OF MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT** on the interested parties
10 in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:
1112 **COUNSEL FOR PLAINTIFF:**
13 Robert J. Jones, In Pro Per
14 2063 Main Street, Suite 222
15 Oakley, CA 94516-3302
16 (209) 204-5520
1718 _____ (BY FEDERAL EXPRESS) I caused such envelope to be delivered by hand to the offices of the addressee(s)
19 via Federal Express.
2021 (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the U.S. Mail at
22 Sacramento, CA.
2324 _____ (BY PERSONAL SERVICE) I caused such envelope to be hand delivered to the above address.
2526 _____ (BY FAX) by transmitting by facsimile copying machine a true copy thereof to telephone number
27 _____ known or represented to me to be the receiving telephone number for facsimile copy
28 transmission of the parties/person/firms listed above.I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
29Executed on August 19, 2008, at Sacramento, California.
3031 /s/ Mary Alice Myers
32 MARY ALICE MYERS
3334 **REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT**
35